

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN
DISTRICT OF PENNSYLVANIA

Don Bailey and John/Jane Does 1-25	:	CIVIL ACTION
Plaintiffs	:	NO.
v.	:	
	:	
Disciplinary Board of the Supreme	:	
Court of Pennsylvania; Paul	:	
Killion; and John/Jane Does 1-10	:	
Defendants	:	:INJUNCTIVE RELIEF
		:DEMANDED
		:JURY TRIAL DEMANDED

**COMPLAINT FOR EMERGENCY AND PRELIMINARY INJUNCTIVE
RELIEF UNDER 42 U.S.C. § 1983**

And Now, comes Don Bailey, Plaintiff in the above captioned matter, who moves upon this Court for an Emergency Temporary Restraining Order and for Preliminary Injunctive Relief pursuant to Fed. R. Civ. P. 65, and in support thereof, Plaintiff states as follows:

Introductory Statement

The urgency in this matter is due to proceedings pending before the Defendant Supreme Court Disciplinary Board, and scheduled for hearings on August 11 and 12, 2011. Plaintiffs are the undersigned, Attorney Don Bailey, and 25 of his past and present clients. Plaintiffs have been in the process of preparing a civil complaint for money damages and injunctive relief against the defendants. Among the defendants are three sitting judges

of the Middle District of Pennsylvania, and one judge of the Third Circuit. Three of those judges, the Honorable Anthony J. Scirica, the Honorable Christopher C. Conner and the Honorable John E. Jones, III, are complaining witnesses in the pending proceedings, at least two of whom will actually be testifying according to the Office of Disciplinary Counsel (ODC).

Plaintiff Don Bailey has made his plans known to the parties to this proceeding that he is intending to file a civil action in federal court, and has been preparing that complaint, but is not at yet at liberty, for matters that are protected by the attorney/client privilege, to disclose the identities of those plaintiffs, some of whom have matters currently pending in the Middle District and Third Circuit. Plaintiff will amend his pleading in this regard as permitted by law, or will file a new civil action. Plaintiff represents that at least one of the Doe plaintiffs resides in the Western District of Pennsylvania.

Plaintiff has filed an application to proceed in the King's Bench/extraordinary jurisdiction of the Supreme Court of Pennsylvania, raising grave and extensive violations of his constitutional rights. A copy of that petition, without Exhibits, is attached hereto as Exhibit A, and incorporated herein by reference in its entirety as setting forth the basis of

the constitutional rights within this court's jurisdiction. Plaintiff has learned that his King's Bench petition has been denied as he is preparing this complaint. There is not a quorum currently present on the Supreme Court at the present time, and only Justice Castille who denied the emergency request is present. It became available to Justice Castille this morning. The petition is nevertheless incorporated as a statement in support of his claims pursuant to Section 1983 that are within this Court's jurisdiction, because, at immediate additional issue, and necessitating emergency injunctive relief, is a gross procedural due process violation that will serve to allow the remaining First, Sixth, and Fourteenth Amendment violations to occur, and which can be prevented.

Plaintiff has also filed a petition for review in the Pennsylvania Supreme Court "appealing" prehearing determinations made by the Hearing Chairman and quashing subpoenas of witnesses and for documents critical to his defense. A copy of the petition for review, without exhibits, is attached hereto as Exhibit B. The petition was filed as a matter of procedural right pursuant to the applicable rules, Pa. R.D.E. 213(g), and has been accepted for filing and is being processed according to communications this date with the Supreme Court Prothonotary. It was filed and served on August 2, 2011, in compliance with all requirements as to form, substance, and timeliness.

Rule 213 provides that a rule to show cause must issue within 10 days, and, as of this filing, no such rule has issued. All service has been made, and Plaintiff Don Bailey has been in contact with an assistant of the Supreme Court Prothonotary, and has been authorized to represent that the petition is being processed in the normal course. Attached hereto as Exhibit C is correspondence outlining the conditions precedent to processing the petition, all of which have been satisfied. Plaintiff is further advised that the defendant Disciplinary Board will not voluntarily stay the proceeding scheduled for tomorrow morning.

The critical right that is immediately and irretrievably at issue in this case is plaintiff's right of confrontation under the Sixth Amendment, a right available to him as respondent in a quasi-criminal proceeding, see In re Ruffalo, 390 U.S. 544 (1968), and cases cited in the King's Bench petition. Pennsylvania Supreme Court Rules specifically permit this procedure, and, as set forth in the attached petition for review and King's Bench petition, plaintiff has clearly defined the right at issue that will be lost if the proceedings are allowed to move forward.

There can be no higher mandate of this Court than to prevent, when it can, the loss of a constitutional right before it occurs, and plaintiff has clearly set forth an imminent violation of his rights under the First, Sixth,

and Fourteenth Amendments which have yet to be fully committed, although clearly committed to a justiciable degree already that can be avoided, and must be avoided, by this Court's exercise of its power to enter Temporary Restraining Orders and preliminary injunctive relief under 42 U.S.C. § 1983, and Fed. R. Civ. P. 65.

WHEREFORE, plaintiff, Don Bailey, on his own behalf and on behalf of his John Doe clients, demands judgment in his favor, and against the defendants, and seeks a Temporary Restraining Order directing the defendant Supreme Court Disciplinary Board to cease and desist any and all further proceedings in the matter of Office of Disciplinary Counsel v. Donald A. Bailey, currently pending at 11 D.B. 2011. Plaintiff reserves all other rights as to form and substance of his pleading, and to the nature of any and all future relief to be requested. Plaintiff waited until the absolute latest moments that he could in order to alleviate the docket strain and burden on this Court, and has gone through every effort to resolve this immediate matter short of this emergency request for injunctive relief. All such efforts have been unsuccessful, and all the conditions for the grant of injunctive relief have been met. An appropriate motion will follow.

Respectfully Submitted,

By: /s/Don Bailey, Esquire
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